

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SAMER SHAMI,

Defendant-Appellant.

Supreme Court

No. 155273

Court of Appeals

No. 327065

Circuit Court

No. 14-011190-FH

THE PEOPLE'S ANSWER IN OPPOSITION TO
DEFENDANT'S APPLICATION FOR LEAVE TO APPEAL

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Dated: March 6, 2017

The People of the State of Michigan, through the Attorney General, Bill Schuette, ask this Court to deny Defendant's application for leave to appeal, saying:

1. Defendant's application relies on the same arguments made in the Court of Appeals.
2. The People's Brief on Appeal in the Court of Appeals adequately addressed these issues and is incorporated in this answer. (App'x A.)
3. The Court of Appeals did not clearly err in rejecting Defendant's arguments and remanding this matter to the Wayne County Circuit Court for trial. MCR 7.305(B)(5)(a). And, the Court of Appeals opinion does not conflict with prior precedent. MCR 7.302(B)(5)(b).
4. Defendant's application does not satisfy any of the other grounds for granting leave to appeal. MCR 7.305(B)(1)-(3).
5. Defendant's new claims that the Court of Appeals ruling makes the Tobacco Products Tax Act (TPTA) void for vagueness is unfounded. The Court of Appeals ruling as it relates to the definition of manufacturing is consistent with the federal definitions to which all Michigan tobacco manufactures are already subject. (See pages 14-15 of appendix A). Furthermore, in *People v. Assy*, ___ Mich App___; ___NW 2d. ___ (2016) (COA Docket No. 326274; 2016 WL 3766014) the Michigan Court of Appeals held that the TPTA is not unconstitutionally vague as its written and applied criminally to people that sell tobacco in this State.
6. Defendant's application raises no issues worthy of this Court's review, and it should be denied.

CONCLUSION AND RELIEF REQUESTED

Accordingly, the People ask this Court to deny Defendant's application for leave to appeal.

Respectfully submitted,

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Dated: March 8, 2017

STATE OF MICHIGAN

IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v.

Court of Appeals No: 327065

SAMER SHAMI,

Wayne County Circuit
Court No. 14-011190-01 FH

Defendant-Appellee.

**BRIEF OF APPELLANTS
PEOPLE OF THE STATE OF MICHIGAN**

ORAL ARGUMENT REQUESTED

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STATEMENT OF JURISDICTION

Appellee/Defendant filed a Motion to Dismiss (Quash) in the Wayne County Circuit Court. The Circuit Court heard argument on the issues presented and then granted the motion as a matter of law on March 3, 2015. The Court of Appeals has jurisdiction to hear this appeal of right pursuant to MCR 7.203(A)(1).

QUESTIONS PRESENTED

1. Does the Tobacco Products Tax Act require a person to be held criminally liable for failing to have proper invoices substantiating that the tobacco tax was paid to the State of Michigan?

Appellant's answer: Yes.

Appellee's answer: No.

Trial court's answer: No.

2. Does Defendant's mixing of hookah tobacco flavors to create new flavors and blends and preparing hookah tobacco for resale and distribution constitute manufacturing under the Tobacco Products Tax Act?

Appellant's answer: Yes.

Appellee's answer: No.

Trial court's answer: No.

CONSTITUTIONAL PROVISIONS, STATUTES, RULES INVOLVED

Tobacco Products Tax Act: MCL 205.421, *et seq*, MCL 205.423, MCL 205.426.

MCL 205.422(e): “manufacturer” means a person who manufactures or produces a tobacco product; MCL 205.422(g) “person” means an individual, partnership, fiduciary, association, corporation, or other legal entity; MCL 205.422(p) “unclassified acquirer” means a person, except a transportation company or a purchaser at retail from a retailer licensed under the general sales tax act . . . who imports or acquires a tobacco product from a source other than a wholesaler or secondary wholesaler licensed under this act for use, sale, or distribution.

MCL 205.423(1): a person shall not purchase, possess, acquire for resale, or sell a tobacco product as a manufacturer, wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transportation company, or transporter in this state unless licensed to do so.

MCL 205.426(1): Except for a manufacturer, the records shall include a written statement containing the name and address of both the seller and the purchaser, the date of delivery, the quantity, the trade name or brand, and the price paid for each tobacco product purchased. A licensee shall keep as part of the records a true copy of all purchase orders, invoices, bills of lading, and other written matter substantiating the purchase or acquisition of each tobacco product.

(2): a manufacturer, wholesaler, and secondary wholesaler shall deliver with each sale or consignment of a tobacco product a written statement containing the name or trade name and address of both the seller and the purchaser, the date of delivery, the quantity, and the trade name or brand of the tobacco product, correctly

itemizing the prices paid for each brand purchased, and shall retain a duplicate of each statement.

INTRODUCTION

The issues in this case present a question of first impression for this Court involving statutory interpretation of provisions of the Tobacco Products Tax Act (TPTA), MCL 205.421 *et. seq.* The TPTA heavily regulates tobacco products as well as people involved in the tobacco industry in Michigan. The regulations contained therein affect people and entities licensed to import and transport untaxed tobacco as well as the movement and sale of taxed tobacco products for sale to retailers and ultimately end consumers. It is essential for proper administration of the TPTA that tobacco tax licensees submit accurate and timely tax returns to the Department of Treasury. Since the Other Tobacco Products (OTP) (non-cigarette tobacco) tax is 32% of the wholesale value, there is significant motivation for tax evasion. The Court of Appeals has held that at its core, the TPTA is “a revenue statute designed to assure that tobacco taxes levied in support of Michigan schools are not evaded.” *People v. Beydoun*, 283 Mich App 314, 327 (2009).

At the onset of this matter, it is important to understand the statutory scheme for proper tobacco distribution in Michigan. Wholesalers and Unclassified Acquirers are the only two entities that can import tobacco products into the State.¹ Wholesalers and Unclassified Acquirers may sell to end users directly or to secondary wholesalers. Secondary wholesalers can only sell to retailers. See MCL 205.422(s). A “retailer” under the TPTA is “a person other than a transportation company who operates a place of business for the purpose of making sales of a

¹ MCL 205.428(2) creates an exception for sales representatives of manufacturers.

tobacco product at retail.” MCL 205.422(q). A retailer is not required to obtain a license from the Michigan Department of Treasury. A retailer may sell tobacco products to consumers. MCL 205.423 requires manufacturers, wholesalers, secondary wholesalers, unclassified acquirers, transporter/transportation companies, and vending machine operators to obtain a license from the Michigan Department of Treasury. MCL 205.423. There are extensive records keeping requirements set forth in the TPTA. Licensees are required to submit monthly tax returns with sales and purchases histories to ensure the tobacco tax is being paid. MCL 205.426/ MCL 205.427.

In this matter, Sam Molassess, LLC was licensed as an Unclassified Acquirer of Other Tobacco Products and as a Secondary Wholesaler of Other Tobacco Products. Samer Shami ran Sam Molasses, LLC. He bought hookah tobacco from sources outside of the State of Michigan. He then sold some of the product in Michigan and shipped some of the product out of state pursuant to his Secondary Wholesaler license.

The Circuit Court erred in deciding that 1) Mr. Shami as an individual person could not be held criminally liable for having improper invoices or failing to have invoices; and 2) preparing a product for resale and mixing tobacco to form new flavors and blends is not “manufacturing” under the TPTA. Using the plain meaning of the definitions in the TPTA, an individual can be held criminally liable for violations of the TPTA. MCL 205.428. Thus, a person can be held criminally liable for possessing improper invoices to substantiate tobacco products in their

possession or for failing to possess certain invoices. MCL 205.426. The invoices Mr. Shami had were improper because they did not adequately identify and substantiate that the tobacco tax was paid on the tobacco products for which they were offered and several tobacco products had no invoicing available to substantiate the tax was paid.

Furthermore, the statutory definition of a “manufacturer” under the TPTA is circular and clarification from this Court is needed to determine what the plain meaning of that term means. The People believe this Court should look to the dictionary definition, other sections of the TPTA, other legislative definitions, or prior cases on manufacturing in other areas of law to give plain meaning to “manufacturer” as used in the TPTA. Regardless of what resource the Court uses to define “manufacturer,” the question of whether Mr. Shami is a manufacturer should go to a fact finder to determine whether Mr. Shami manufactured tobacco products without a license by blending of hookah tobacco to create new flavors or by processing and repackaging of the hookah tobacco, or both.

STATEMENT OF FACTS

On May 1, 2013 the Department of Treasury, and Michigan State Police acting as Treasury's agents, conducted an administrative inspection of Sam Molasses, LLC. Sam Molasses, LLC was a licensed secondary wholesaler and a licensed unclassified acquirer of other tobacco products. The store sold molasses tobacco (hookah), hookah pipes, and accessories. (PE 1, P. 20, 36). An unclassified acquirer is allowed to import untaxed tobacco products into the State of Michigan. *Id.* However, once they acquire the tobacco products, the unclassified acquirer must pay taxes on them. *Id.* (PE 1, P. 14). Fadi Shami, Defendant Shami's wife, is named on both licenses. (PE 1, P. 21). Defendant is not named on either license. *Id.* At the administrative inspection, invoices for products were reviewed with the tobacco products themselves to ensure compliance in reporting and that the appropriate taxes have been paid. *Id.* at 36.

During the inspection, Ms. Nordmann, head of Tobacco Tax Enforcement at Treasury, spoke with Mr. Shami after he consulted with his counsel, and he indicated that he mixes two or three flavors of tobacco to come up with his own blend. *Id.* at 17. He then put the new blend into containers. *Id.* Ms. Nordmann also noticed bulk plastic bins, which alerted her to the possibility of manufacturing based on the fact that the labels on the bins did not match up to the invoices provided. *Id.* at 27. [One bin was labeled "Sam's Blend"; a picture of that bin was entered into evidence]. According to Ms. Nordmann's instruction from policy attorneys, it was her understanding that mixing, blending, or flavoring constituted manufacturing. *Id.* at 28.

MSP Detective/Sergeant Stephanie Cleland attended the inspection and requested the store's invoices from the past four years, as the TPTA requires a licensee to keep the last four years of invoices on site. *Id.* at 37, 87. The clerk advised that the invoices were not in the office and she would need to call the owner. *Id.* at 38. Subsequently, Mr. Shami appeared at the store. *Id.* Mr. Shami indicated that his wife was only listed on paper, but that he handled all the day to day operations at the store. *Id.* at 41. Moreover, Ms. Fadi Shami, Defendant's wife, has not attended any forfeiture or licensing hearing at the Department of Treasury, but Mr. Shami attended everything on behalf of the store in the civil forfeiture proceedings for the seized products. *Id.* at 22-3.

MSP advised Mr. Shami that he did not have four years of worth of invoices from El Tahan at the store. *Id.* at 46. Mr. Shami then contacted El Tahan who forwarded some invoices two days later. *Id.* Sergeant Cleland inspected the El Tahan invoices that were available at the store and determined that they did not comply with MCL 205.426 because they did not list a weight or specify flavors of the tobacco [or specifically identify the tobacco product it was offered to substantiate]. *Id.* at 45. The invoices did indicate that Mr. Shami paid over \$250 for the tobacco. *Id.* at 63. Sergeant Cleland showed Mr. Shami his invoices from other tobacco suppliers (Sierra Network and Karabeshian) and explained that those satisfied the requirements set forth in MCL 205.426 because they included a break-down of quantity, weight, flavor, name of the product, price per item, and a total price [or in other words specifically identify the tobacco the invoice substantiated]. *Id.* at 73,78.

During the inspection, Sergeant Cleland inspected the tobacco from El Tahan. The boxes of tobacco from El Tahan were not labeled and contained clear packets of what appeared to be Molasses tobacco. *Id.* at 55. Mr. Shami explained that the packets of tobacco were placed into tins and then labeled with “360” and sold at his store. *Id.* Additionally, Mr. Shami labeled the tobacco with different flavors before they were sold at his store. *Id.* at 68. These flavors were not found on the invoices from El Tahan. *Id.* at 86. The invoices were entered into evidence for the court to review. (PE 1, P. 46-7).

PROCEEDINGS BELOW

Preliminary Examination – District Court

The 19th District Court bound over Counts 1 and 2 for Tobacco Products Tax Act Violations, MCL 205.428(3), on December 19, 2014. The District Court dismissed Counts 3, 4, and 5 for Failure to File/False Taxes.

Motion to Dismiss/Quash – Circuit Court

The Circuit Court dismissed Counts 1 and 2 on March 13, 2015 after finding the District Court abused its discretion in binding over Defendant on the two TPTA charges.

ARGUMENT

I. The Tobacco Products Tax Act requires a person to be held criminally liable for failing to have proper invoices.

A. Issue Preservation

The court entered a final order dismissing the case on March 13, 2015.

B. Standard of Review

The court reviews a trial court's ruling on a motion to dismiss for abuse of discretion. *People v. Adams*, 232 Mich App.128, 132 (1998). The court reviews "*de novo* questions of statutory interpretation." *People v. Martin*, 271 Mich. App. 280, 286-87, 721 N.W.2d 815 (2006), *aff'd* 482 Mich. 851, 752 N.W.2d 457 (2008).

C. Analysis

The People charged Defendant Shami under MCL 205.428(3) for failing to have invoices that satisfy the requirements set forth in MCL 205.426. The TPTA requires the People show at preliminary exam by probable cause that Mr. Shami 1) purchased, possessed, acquired for resale, or offered for resale tobacco other than cigarettes; 2) that said tobacco products were not properly substantiated by invoices that comply with the requirements set forth in MCL 205.426; and 3) that the wholesale value of the tobacco in question was more than \$250.00. The People met this burden. The District Court bound the charges over for trial. The trial court granted Defendant's motion to dismiss because the court found "to impose liability on the licensee or the retailer is one thing, but to impose it on the individual is another." (PE 1, p. 24-5).

1. Mr. Shami is a person under the TPTA and can be held criminally liable for improper record keeping/invoices under the TPTA

Mr. Shami is required under the TPTA to keep true records of his purchases including, but not limited to, invoices (MCL 205.426(1)). Defendant's company, Sam Molasses, LLC, is licensed as an unclassified acquirer which, under the TPTA, is defined as a "person. . . who imports or acquires a tobacco product" (MCL 205.422). Under the TPTA, a person is defined as "an individual, partnership . . . or other legal entity" (MCL 205.422). The TPTA thus creates both civil and criminal liability for individuals and business entities who violate the TPTA.

The basic rule of statutory interpretation is to determine the legislative intent behind the statute. *People v. Pitts*, 216 Mich App 229, 232 (1996). In cases where the statute is clear, judicial construction is precluded. *People v. Hock Shop*, 261 Mich App 521, 524 (2004).

Here, judicial interpretation of the statute "must give effect to every word, phrase, and clause and avoid an interpretation that would render any part of the statute surplusage or nugatory." *State Farm Fire & Cas. Co. v. Old Republic Ins. Co.*, 466 Mich 142, 146 (2002). The reviewing court should also consider the statute's "placement and purpose in the statutory scheme," *Sun Valley Foods Co. v. Ward*, 460 Mich. 230, 237 (1999), to give full effect to the Legislature's intent. *People v. Dowdy*, 489 Mich 373 (2011). The Legislature has the power to amend statutes after the court provides an interpretation with which it disagrees. (See *People v. Smith-Anthony*, 494 Mich 669, 688 (2013); *People v. Williams*, 491 Mich 164 (2012) regarding elements of robbery statutes).

The statute at bar is unambiguous. Thus, the plain meaning of the statutory language should control. The statutory definitions are clear that an unclassified acquirer is a person and a person can be an individual. Moreover, MCL 205.428(3) penalizes a “person” in violation of the TPTA, not just licensees. Shami managed the store and performed or oversaw all of the activities that made his business an unclassified acquirer. Therefore, Mr. Shami, as an individual, can and should be held liable for the improper invoices he used to substantiate tobacco he possessed, or for failing to produce the invoices upon request.

However, even if the court finds the statutory language unclear, in criminal law it is common to hold individual persons, rather than a corporation, liable for criminal acts, though corporations can be held liable as well. *People v. Cheff*, 37 Mich App 1 (1979). The basic principle in criminal law is that the bad actor is held responsible. In *Cheff*, the court held that an agent “cannot shield himself from criminal responsibility for his own act on the ground that it was done in his official capacity as an officer of a corporation.” *Id.* at 11; see *Hock Shop*, 261 Mich App at 673; *BC Tile & Marble Co., Inc. v. Multi Bldg. Co., Inc.*, 288 Mich App 576, 586 (2010). Furthermore, even if a corporation is owned by one person, the criminal conduct of that corporation can be attributable to a member of the corporation’s staff. *Dep’t of Consumer Indus. Servs. v. Shah*, 236 Mich App 381, 394 (1999). Moreover, even if a licensee or corporation should have been held liable here, there is not a different standard of proof between an individual, corporation, or licensee, as the court held. It is clear under the TPTA that a person includes individuals and

corporations. Here, Mr. Shami violated MCL 205.428(3) by possessing over \$250 wholesale value of other tobacco products without proper invoices. As shown at exam, the invoices did not sufficiently itemize and describe the tobacco products they were to substantiate. Mr. Shami is the criminal actor in this situation. Either as an officer or agent of the corporation he can be liable for the improper invoices under Michigan law.

2. The invoices from El Tahan and accepted by Mr. Shami did not meet the enumerated requirements of the TPTA.

Mr. Shami is required under the TPTA to keep true records of his purchases for four years at his place of business (MCL 205.426(1) & 205.426(5)). Furthermore, the records need to sufficiently state the tobacco product he has imported into the State so that the Department of Treasury can complete inspections of his products to determine that the tobacco tax was paid. (MCL 205.426(1)). Lastly, MCL 205.426(4) places an extra requirement for licensees to not issue **or accept** improper documentation (emphasis added). The purpose for the documentation requirements are so that the State can ensure that the tobacco tax is being paid properly. In this matter, evidence was presented that showed that the invoices were not being stored at the location of the tobacco being sold and that the invoices did not sufficiently list the brand names and itemization of the hookah tobacco by flavor and trade name. (PE 1, p. 37, 45). Moreover, value was proven by probable

cause by entering the invoices provided into evidence². (See PE 1, P. 51 (exhibit 41 entered into evidence)).

II. The Defendant's mixing of hookah flavors and labeling hookah containers constitutes manufacturing under the Tobacco Products Taxation Act.

A. Issue Preservation

The court entered a final order dismissing the case on March 13, 2015 that held that Mr. Shami was not a licensed manufacturer of hookah tobacco.

B. Standard of Review

The court reviews a trial court's ruling on a motion to dismiss for abuse of discretion. *People v. Adams*, 232 Mich App 128, 132 (1998). The court reviews "*de novo* questions of statutory interpretation." *People v. Martin*, 271 Mich App 280, 286-87, 721 N.W.2d 815 (2006), *aff'd* 482 Mich. 851, 752 N.W.2d 457 (2008).

C. Analysis

The People charged Defendant Shami with violating the TPTA for manufacturing tobacco products without a license pursuant MCL 205.423 and MCL 205.428(3). The People were required to show at exam by probable cause that Mr. Shami 1) possessed, acquired for resale or offered for resale tobacco other than cigarettes as a manufacturer, 2) that he did not possess a valid manufacturer's license, 3) that the wholesale value of the tobacco in question was more than

² See *Sprunger Piper & Tobacco, LLC v. State of Michigan, Department of Treasury*; Court of Claims 13-00008-MT. Judge Talbot held the TPTA "wholesale value" means the actual price paid for the tobacco to a manufacture or supplier. (Pg. 6).

\$250.00. Mr. Shami manufactured hookah tobacco in at least two different ways. First, Mr. Shami blended or combined flavors of hookah to create new flavors; second, Mr. Shami processed raw, bulk hookah into a marketable product by canning, labeling, and boxing hookah products under his own label. The Circuit Court granted Defendant's motion to dismiss because the court found that "blending two types of hookah tobacco does not constitute manufacturing." (Transcript of Motion, P. 25).

1. **Either the blending of hookah to create new flavors or processing, repackaging and relabeling of raw hookah constitute tobacco manufacturing and therefore Mr. Shami is a manufacturer**

There is no case law on the license requirements under the TPTA, including what a manufacturer is in Michigan under the TPTA. The term "manufacturer" is defined in the TPTA as a "person who manufactures or produces tobacco". MCL 205.422(e). When interpreting a statute, the first step is to look to the plain meaning. *People v. McKinley*, 496 Mich 410, 415, 852 N.W.2d 770, 772 (2014) (citing *Ter Beek v. City of Wyoming*, 495 Mich 1, 8, 846 N.W.2d 531 (2014)). Language in a statute "is to be given its ordinary and generally accepted meaning, although if the statute defines a given term, that definition is controlling." *People v. Giovannini*, 271 Mich App 409, 413, 722 N.W.2d 237, 240 (2006). Here, the first definition of "manufacturer" in the TPTA is of little help as the definition is circular. The TPTA defines "manufacturer" with the term "manufactures" and then "produces," leaving the term difficult to apply.

If a term is not defined by the Legislature, a court “may consider dictionary definitions to aid in interpretation.” *Autodie, LLC v. City of Grand Rapids*, 305 Mich App 423, 434, 852 N.W.2d 650, 658 (2014). The verb form of “manufacture” is defined as “to make a product suitable for use.” *Merriam-Webster Dictionary* (2015), def. 1. This is precisely what Mr. Shami did when he took bulk hookah tobacco in clear, plastic, unmarked bags and canned and relabeled the hookah for resale in the United States. He finished the process of preparing the tobacco for the market place.

While the section at issue does not explicitly describe the term “manufacturer,” the TPTA does support the idea that tobacco changing forms or flavors is manufacturing. Under manufacture, the TPTA defines rolling your own cigarettes as manufacturing. MCL 205.422(m). One rolls their own cigarettes by placing loose tobacco (usually bagged pipe tobacco) into cigarette tubes. The tobacco does not change at all but the delivery method does; from loose tobacco requiring a pipe to tobacco in a cigarette tube. The flavor and tobacco itself remains the same. Thus, to require raw materials and a totally new product other than hookah for manufacturing to occur misses the intent of the statute.

Even though the TPTA’s definition of “manufacture” may be circular, the Legislature has defined the term “manufacture” in other acts. Most importantly, the Legislature gave deference to federal law in tobacco tax regulations so that federal and state regulations could be similar. See MCL 205.14. The federal government defines “tobacco product manufacturer” as “any person, including any

re-packer or re-labeler, who: (A) manufactures, fabricates, assembles, processes, or labels a tobacco product; or (B) imports a finished tobacco product for sale or distribution in the United States.” 21 U.S.C. 387(20). This court should give deference to the federal definition because the Legislature clearly tried to consolidate terms across various tobacco regulation statutes to make all definitions consistent between our State regulations and the Federal regulations. Under the plain language of the Federal definition, Mr. Shami would be a tobacco product manufacturer since he is doing exactly what is described by federal law. He is receiving hookah tobacco, processing the tobacco, re-packaging it into cans, labelling the cans, and then distributing the finished product in the United States.

Additionally, while other statutes are certainly not controlling, they are illustrative of how the Legislature interprets the word “manufacture.” In the Controlled Substances Act (CSA) “manufacture” is defined to include “the preparation, compounding, packaging, or labeling of a controlled substance.” MCL 333.7106(3). In the Tobacco Product Manufacturer’s Escrow Account statute, the term “tobacco products manufacturer” includes being the “first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States.” MCL 445.2051(l). The CSA and Tobacco Products Escrow Account statutes provide similar uses of the term “manufacture” as to what was occurring here. Using the CSA’s definition, Mr. Shami would be manufacturing hookah. Mr. Shami is both packaging the hookah into new cans and labeling the hookah with his own descriptions. Similarly, Mr.

Shami would be considered a manufacturer under the Tobacco Products Manufacturer's Escrow Account statute. Mr. Shami is buying the hookah from Jordan and selling it as a resale item for the first time from his store. The aforementioned definitions are illustrative of the Legislature's intent as to what constitutes manufacturing. The CSA is particularly illustrative because, while tobacco is not a controlled substance, tobacco and those delineated under the CSA have characteristics in common; namely that both acts highly regulate substances. Using either of those guiding definitions, it is clear Mr. Shami was manufacturing hookah products without a license.

Moreover, other states have defined "manufacture" as it relates to tobacco products. A Kentucky court defined a tobacco "manufacturer" nearly one hundred years ago as "one who is engaged in the business of working raw materials into wares suitable for use, who gives new shapes, new qualities, new combinations to matter which has already gone through some artificial process." *Am. Tobacco Co. v. City of Bowling Green*, 181 Ky 416, 205 S.W. 570, 572 (1918) (emphasis added). This definition reflects what occurred in this matter. Mr. Shami took two different Hookah flavors and combined them to make a new distinct flavor. It was a new flavor combination of tobacco that was produced in Mr. Shami's store. At the circuit court, the defense asserted that Mr. Shami repackaged the hookah due to the containers being opened from overseas shipment. If this were actually the case, Mr. Shami would not have had to repackage and label it in a manner fit for sale.

Lastly, Michigan case law has held that a processor is a type of manufacturer. *Great Lakes Sales Inc, v. State Tax Commission*, 194 Mich App 271 (1992). The Court of Appeals found in *Great Lakes Sales* that a flooring company that only performed the finishing processes, cutting and storing flooring, was a manufacture for manufacturing tax exemption status. Here too, Mr. Shami was acting as a manufacturer by processing hookah tobacco from a raw unmarketable state into a finished product capable for sale. He would can, label, box, and store the product at his store for resale. Under either theory of manufacturing, combining flavors to create a new product, or processing raw hookah tobacco into a marketable state, the People presented enough evidence at preliminary exam for a finder of fact to determine that Mr. Shami manufactured tobacco without a tobacco license. The question of whether he criminally manufactured tobacco products without a license should be sent to a fact-finder. The Circuit Court erred by dismissing this count.

CONCLUSION AND RELIEF REQUESTED

The People have established that the Circuit Court abused its discretion in dismissing Count 1 and 2. According to the plain meaning of the TPTA, as a matter of law, an individual must keep invoices to substantiate tobacco products in his possession, and can be held criminally liable for keeping improper invoices. Additionally, as a matter of law, a “manufacturer” under the TPTA should encompass a person making new flavors or blends of tobacco products and processing tobacco to be resold, repacked and rebranded.

The People request that the court grant this appeal and remand this case to Circuit Court for trial on the original TPTA charges.

Respectfully submitted,

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